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OFFICIAL

July 12, 2004

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TO Examiner Sudhaker B. Patel
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PATENT--FEE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

REQUEST FOR RECONSIDERATION AND WITHDRAWAL
OF HOLDING OF FINALITY OR, IN THE ALTERNATIVE,
PETITION TO WITHDRAWN HOLDING OF FINALITY

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Six:

Applicants, through their undersigned attorney, hereby request reconsideration and withdrawal of the holding of finality with respect to the Office Action dated May 19, 2004. In the alternative, should the examiner upon reconsideration decline to withdraw the finality of the action, this paper should be considered a petition to the commissioner pursuant to 37 C.F.R. §§1.113(a) and 1.181 for such relief.

This paper is timely filed as it is being submitted within two months of the mailing date of the Office Action. See 37 C.F.R. §1.181(f).

I. Statement of the Facts

The facts pertinent to this request/petition are as follows:

1. On May 19, 2004, an Office Action was mailed finally rejecting pending claims 19 and 21-31 and objecting to claims 1-3, 5, 8-12, and 14-18.

2. In the Office Action, paragraph 13 is titled "New Rejections," and paragraphs 14-21 cite new rejections of claim 19, 21-25, and 28-31 under 35 U.S.C. §102(b).

II. Statement of the Applicable Rules

A rejection of a claim may be made final on "the second or any subsequent examination or consideration by the examiner" 37 C.F.R. §1.113(a). However,

"[U]nder present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." (MPEP §706.07(a), 8th Ed. Rev. 1, Feb., 2003).

**III. Reasons for Granting the
Requested Relief/Petition**

Pending claims 19, 21-25, and 28-31 were rejected for the first time under 35 U.S.C. §102(b) in the May 19, 2004 Office Action. Applicants' response of April 15, 2004 did not necessitate the new ground of rejection, nor was the art cited against the claims based on information provided by applicants in an Information Disclosure Statement. Accordingly, the finality of the May 19, 2004 action is premature.

In view of the foregoing, it is respectfully submitted that the finality of the May 19, 2004 action should be withdrawn.

IV. Conclusion

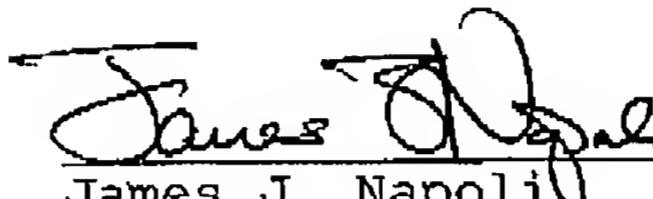
In the interest of providing applicants with a full and fair consideration of their claims, applicants, through their undersigned attorney, hereby request reconsideration and withdrawal of the holding of finality of the May 19, 2004 Office Action. Upon reconsideration, should the examiner decline to withdraw the finality of the outstanding action, this paper should be considered a petition to the commissioner for such relief.

Any required petition fee (e.g., a \$130 petition fee pursuant to 37 CFR §1.17(h)) may be charged to our Deposit Account No. 13-2855. A copy of this paper is enclosed.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

By



James J. Napoli
(Registration No. 32,361)
Attorneys for Applicants
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
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Chicago, Illinois
July 12, 2004

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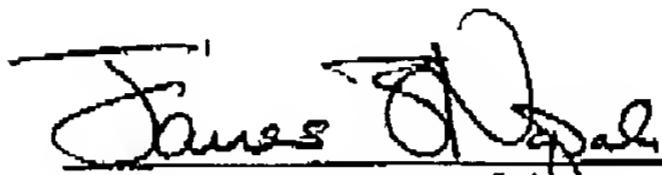
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